THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

W.P. No. 26619 of 1995

Dated: 24.10.2006

Between:

P.V.P. Anjaneyulu

… Petitioner

AND

The Andhra Pradesh Agricultural University,
Rajendranagar, Hyderabad,
Rep., by its Registrar & another.

… Respondents

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

W.P. No. 26619 of 1995

ORDER:-

Heard the learned counsel for the petitioner and also the learned counsel for the respondents.

This writ petition is filed seeking a writ of Mandamus declaring the action of the respondents in not considering the case of the petitioner for re-appointment under Section 25 (H) of Industrial Disputes Act, 1947 (for short "the Act") as illegal, unjust, contrary to law and violative of Articles 14, 16 and 21 of the Constitution of India.

The admitted facts in this case are that the petitioner was appointed as a casual labourer and his services were utilized as Typist from 1991 to 1993 by the 2nd respondent. By an order dated 09.02.1994, the petitioner's services were terminated. The petitioner claims that the provisions of Act 2 of 1994 are not applicable to him and therefore, he assails the termination of his services as being illegal and in violation of Section 25 (F) of the Act. The petitioner also claims that under Section 25 (H) of the Act, being a retrenched employee, he is entitled for consideration of his case on preferential basis without again being referred to the Employment Exchange. According to the petitioner, overlooking his claim, the respondents

have written to the Employment Exchange to sponsor fresh candidates.

The 2nd respondent filed his counter wherein the fact that the petitioner's services were utilized from September, 1991 to April, 1993 on payment of lump sum amount every month is admitted. The 2nd respondent also pleaded that in view of coming into force of Act 2 of 1994, engagement of persons on daily wage basis is prohibited and therefore, the petitioner's services have been terminated.

From the contents of the counter-affidavit, it is clear that the Agricultural University permitted the 2nd respondent on 06.02.1993 to fill up two Typist posts sanctioned to the MLTC schemes through Employment Exchange and that in pursuance of the same, the petitioner and another candidate sponsored by the Employment Exchange were interviewed and appointed on consolidated pay of Rs.800/- per month. I am at a loss to know as to why the 2nd respondent, despite being permitted to fill up the two posts on regular basis, chose to promote adhocism by appointing the petitioner temporarily. Since the relief sought for in the present writ petition is limited to the reemployment of the petitioner under Section 25(H) of the Act, I do not want to delve further into this aspect.

As regards, the relief of reemployment under Section 25(H) of the Act, the respondents resisted this relief on the ground that Act 2 of 1994 prohibits employment of any person on daily wage basis.

Sri A.K.Jayaprakash Rao, learned counsel for the petitioner drew my attention to proviso 4 to Section 7 of Act 2 of 1994, which exempted the application of provisions of the said Act to the workman governed by Chapter V-B of the Act. In view of this provision, the contention of

the respondents cannot be countenanced. Section 25(H), which admittedly falls under Chapter V-B imposes an obligation on the employer to re-employ the workmen, who were earlier retrenched as and when there is a need. The respondents cannot therefore, avoid engagement of the petitioner in the event of there being work.

For the aforementioned reasons, the writ petition is allowed and a direction shall issue to the respondents to re-engage the petitioner as a Typist or in any other suitable post, following the provisions of Section 25(H) of the Act in the event of there being a need for the respondents to engage any workmen to discharge the duties, which the petitioner had been earlier discharging prior to his retrenchment.

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C.V. NAGARJUNA REDDY, J

Date: 24.10.2006
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